JUSTICE MORSCHAUSER'S DECISION IN THE STILLMAN CASE

their day in court, or perhaps several days, as to matters affecting them, and this all means time, labor and the expenditure of money."

This was regarded as a definite intimation that unless one or the other was conscious of complete innocence, further litigation was futile. But the intimation was modified by the further statement: "The charges against the defendant (Mrs. Stillman,) are very serious and momentous and, if sustained the consequences would be very serious to her future, even if she should succeed in sustaining the charges against the plaintiff."

Mrs. Stillman's right to make a vigorous defense is acknowledged not only for her own sake but for the interests of her children.

The Court orders that the children must be maintained as well as their mother in the manner to which they are accustomed. Except for Guy Stillman, the court says, they are old enough to decide for themselves with which parent they wish to live, and the mother's allowance must be sufficient to care for them when they are with her.

The decision ends with an impressive assertion of the rights of the baby Guy, described as "one person in this case so young and innocent as not to understand what this action is all about, and will not understand until he comes to an age of understanding, if plaintiff is successful against the child, the child will bear a stain that cannot be erased and for which he is not responsible."

Mrs. Stillman comes to the defense of Guy and his good name, the Court says, "as is her duty" and "this is expected of any mother." It is also the duty of the Court, he adds.

In commenting on the decision, John F. Brennan, of counsel for Mrs. Stillman said to-day: "While I am not quite satisfied with the counsel fee as there has been and will be great expense in conducting the future motions and the trial, there will be no appeal on my part." Three firms of lawyers represent Mrs. Stillman.

Justice Morschauser has intimated that a separate allowance is to be made later for John E. Mack, guardian to Guy Stillman.

Mrs. Stillman's attorneys announced that as soon as the alimony order had been entered they would submit a new motion to amend Mrs. Stillman's defense by alleging intimacy between Mr. Stillman and a woman other than Mrs. Leeds, whose name they have not ascertained.

Referee Gleason said that no date had been fixed for resuming the taking of evidence before him.

JUSTICE MORSCHAUER'S DECISION IN FULL.

The text of Justice Morschauser's decision follows:

"This motion is made by the defendant, Anne U. Stillman, for permission to serve an amended answer and for alimony and counsel fee. The plaintiff consented to the granting of the order for permission to serve an amended answer, but opposed the motion for alimony and counsel fee.

"Before deciding the motion, I deem it proper to pass upon the exhibits:

"Exhibit 'A.' The alleged letter from defendant to plaintiff and the exhibits 'B' to 'H' inclusive, consisting of letters alleged to have been written by the co-respondent to defendant and received by her and claimed to have been delivered subsequently to the plaintiff. The defendant objects to the use of these exhibits by plaintiff. Section 831 of the Code of Civil Procedure provides as follows:

"Sec. 831. When husband and wife not competent witness; when competent—a husand or w'fe is not competent to testify against the other, upon the trial of an action, or the hearing upon the merits of a special proceeding, founded upon an allegation of adultery, except to prove the marriage or disprove the allegation of adultery. However, if upon such trial or hearing the party against whom the allegation of adultery is made produces evidence tending to prove any of the defenses thereto mentioned in Sec. 1758 of this act, the other party is competent to testify in disproof of any such defense. A husband or wife shall not be compelled, or without the consent of the other, if living, allowed to disclose a confidential communication made by one to the other during marriage.

"Communications and transactions between husband and wife were early recognized as privileged, and neither could be compelled to disclose what took place between them and neither was a competent witness to testify as to such transactions or communications of a confidential nature or induced by the marital relation. From experience it was found that far less evil would result from the exclusion of such testimony than from its admission. It may in individual cases work hardship, but the destruction of confidence between a husband and wife would cause much misery and affect the marriage relation. This rule is founded upon sound public policy.

CONFIDENCES OF COUPLES SHOULD BE PRIVILEGED.

"Those living in the marriage relation should not be compelled or allowed to betray the mutual trust and confidence which such relation implies. When modified by legislative enactment, no wider interpretation has been given than the plain letter of the law demanded, and when by statute the disqualification was removed allowing husband and wife to testify as against each other and compelling them to testify the rule still obtained and did not affect the exclusion of privileged communications between the spouses under the common law rules. It is applicable, though terminated by divorce or by the death of one of the parties.

"Letters between husband and wife are within the protection of the rule, as are oral communications, and the contents thereof cannot be disclosed unless the privilege is waived. (Bowman vs. Patrick, 32 Fed. Rep. 365; Hopkins vs. Grimshaw, 165 U. S. 34.) In the Bowman case the wife's administrator found among her papers letters from her husband relating to matters in a suit in which he was then interested. The administrator in a spirit of hostility to the husband delivered the letters to the other side, which sought to use them, and the letters were held privileged.

"In the Hopkins case, Mr. Justice Gray, delivering the opinion of the court, on page 349, said: 'At common law, upon grounds of public policy, husband and wife (with some exceptions not here material) were not permitted, even by consent, to give evidence for or against each other, or to testify even after the ending of the marriage relation by death or divorce, to private communications which took place between them while it lasted.'

"In Millspaugh vs. Potter (62 App. Div. 521), Mr. Justice Smith said at page 524: 'There it was sought to prove a confession by the wife to the husband which is clearly within the protection of the statute.'

"Judge Parker in Warner vs. the P. P. Company (132 N. Y. 181) on page 185 said: 'The evidence offered could have no purpose useful to the defendant unless it tended to show that during such a conversation with her husband she said or did, or omitted to say or do something from which it might be inferred that there existed an unlawful intimacy between her and Smith.'

CONVERSATIONS OF COUPLES PROTECTED BY STATUTE.

"A conversation on such a subject between husband and wife seems to us to be clearly within the protection of the statute.

"The appellant calls our attention to the decision in Parkhurst vs. Berdell (110 N. Y. 386-393), in which Judge Earl, in speaking for the court, said: 'What are confidential communications within the meaning of the section? Clearly not all communications made between husband and wife when alone * * * They are such communications as are expressly made confidential, or such as are of a confidential nature, or induced by the marital relations.'

"Clearly, the definition given does not exclude such a conversation as the defendant desired to prove from the protection of the statute. Its nature was not only confidential, but it was apparently induced by the marital relation, for it cannot be conceived that such a topic would have been the subject of discussion but for the existence of such relation between the parties.

"A further test by which to determine whether a communication is confidential is suggested by the learned Judge in characterizing the nature of the conversations sought to be excluded in that case. He said: 'They were ordinary conversations relating to matters of business which there is no reason to suppose he would have been unwilling to hold in the presence of any person.'

"It cannot be supposed that both husband and wife would have been willing to discuss such a subject in the presence of other persons or would have consented to a repetition of the conversation by either party to it. Its nature, and the relation of the parties forbade the thought of its being told to others, and the law stamped it with that seal of confidence which the parties in such a situation would feel no occasion to exact.

PAIR NOT COMPELLED TO BE SMIRCH EACH OTHER.

"In Hanover vs. Housel (128 Appl. Div. 801) said Mr. Justice Sewell on page 803: 'It is equally clear that the court did not err in excluding the affidavit of the wife, or that part of the conversation between her and the plaintiff which tended to show that the defendant had had criminal intercourse with her. They are not only confidential, but they were apparently induced by the marital relation and clearly within the prohibition of Section 831 of the Code of Civil Procedure, which provides that 'a husband or wife shall not be compelled, or without the consent of the other, if living, allowed to disclose a confidential communication made by one to the other during marriage.'

"There are actions not founded on the charge of adultery where the communications were held not to be confidential. In actions for alienation of a wife's affection proof of the ill treatment of the wife by the husband is competent; profane and abusive language used by him to her is not a confidential communication. (Millspaugh vs. Potter, supra.)

"In Fowler vs. Fowler, 33 N. Y. st. rep. 746, it was held that declarations made by a husband to his wife the second night after the marriage that he did not love her and had made a mistake in marrying her, which was the beginning of a course of ill treatment, was not a privileged communication.

"Norris vs. Lee (136 app. div. 685) was an action on a promissory note made by a husband and wife. A letter was written by the husband to his wife to chronicle his daily doings and stating that he would settle with the plaintiff when he obtained certain moneys. It was held that such letter would not be excluded as a confidential communication.

"The learned presiding justice of the Appellate Division in this department, Mr. Justice Jenks, said on page 686: 'The letter is an ordinary epistle wherein the husband writes to his wife to chronicle the weather, his daily doings, his efforts to find a summer place for the family, and such petty matters. It contains a single sentence which might be pertinent: 'I will settle with your mother just as soon as I can get my hands on the money from the mortgage which I hope to do next week.' I think that this was not a confidential communication within the inhibition of the code of civil procedure. (Sec. 831).'

"It is a debatable question whether exhibits 'B' to 'H' should be received upon plaintiff's affidavit unaccompanied by other affidavits. Matters plaintiff cannot testify to on the trial, bearing on the merits or special proceeding under Sec. 831 of the Code of Civil Procedure he should not be permitted to place in an affidavit on a motion of this kind when the defendant objects. He cannot testify to the handwriting of the defendant or of the co-respondent in actions of this kind.

"The husband or wife in actions for divorce founded on adultery is permitted to testify to the marriage or disprove the allegations of adultery. And Sec. 831 of the Code did not but gave the right generally 'to disprove the allegations of adultery,' to show that the allegation was not true, and that the defendant could not only deny, but could testify to any fact or circumstance within defendant's knowledge, competent and material, on the question as to whether the act as charged was committed.

ACCUSED MAY TESTIFY IN SELF DEFENSE.

"In Biers vs. Biers (156 App. Div. 409) at Page 411 the learned Justice (McLennan, P. J.) said: 'This section has been held to mean that the alleged guilty party is not limited to denying specifically the charges of adultery, but may testify to any fact or circumstance within his or her knowledge, competent and material, on the question as to whether the act, as charged, was committed. (Huntley vs. Huntley, 73 Hun, 261 Stevens vs. Stevens, 54 ID 490 O'Haru vs O'Haru, 136 App. Div. 378.')

"The effect of these decisions is that in order to 'disprove the allegation of adultery' the party charged may testify to facts tending to deny the charges made, or to prove that they were procured to be committed or connived at by the other party to the marriage, or that the offenses have been 'forgiven and condoned,' and at page 413 the learned Justice said: 'It is urged by the respondent that the provisions of Section 831 are intended only to prohibit the husband or wife from testifying against the other upon the issue of adultery in an action for absolute divorce, and that if other issues are tendered by the defendant, such as connivance, or condonation, either party may testify without restraint upon such issues. We are unable to agree with this contention.

"It is contrary to the plain reading of the statute and the language of the section has been strictly applied by the courts in all cases, so far as we have been able to find. In Valentine vs. Valentine (87 App., Div. 156), it was held error to allow the wife to testify against her husband concerning his property and income. In Dickinson vs. Dickinson (62 Hun., 516), it was held error to permit the plaintiff to testify to the fact of her residence where jurisdictional facts were in issue. (See also, Finn vs. Finn, 12 Hun., 339; Taylor vs Taylor, 123 App., Div. 220; Colwell vs. Colwell, 14 Id., 80; Budd vs. Budd, 55 Id., 113.)"

IF OFFENSE IS CONDONED, PLAINTIFF CAN'T DISPROVE IT.

"While the party charged could testify to facts tending to deny the charges made, or to prove that they were procured to be committed or condoned at by the other party to the marriage, or that the offenses have been forgiven or condoned, the plaintiff by his testimony could not disprove it. The decision in the Biers case was overcome by an amendment to Section 831 of the code by Chapter 181, Laws of 1915, as follows: 'However, if upon such trial or such hearing the party against whom the allegation of adultery is made produces evidence tending to prove any of the defense thereto mentioned in Section 1758 of this act the other party is competent to testify in disproof of any such defense.'

"Mr. Nichols, in his work on New York Practice, vol. 1, p. 547, said: 'The question as to whether a person incompetent to testify as a witness can make an affidavit which will be considered, and the effect thereof, is of considerable interest, but no positive rule has been laid down in regard thereto in this State. It has been held that where the testimony of the plaintiff would be incompetent, by reason of its relating to a transaction with deceased person, the plaintiff's affidavit is not alone sufficient to support an injunction and the appointment of a receiver, and that a person serving a sentence on a conviction for a felony, cannot make an affidavit.' (Referring to Gregory vs. Gregory, 33 Super. C. T. 1 J and S. 1; People ex rel Lord vs. Robertson, 26 How. P. R. 90.)

"In the case of the People ex rel Lord, supra, an insolvent debtor was disqualified from making an affidavit to his petition for his discharge from imprisonment under the insolvent laws, and Mr. Justice Lott said at pages 91 and 92: 'The disqualification is general. It extends to all cases where the declaration of the party is to be used in a judicial proceeding for the purpose of establishing or proving some fact; and it applies both to written and oral evidence. It is not limited to testimony or evidence on the trial of causes between parties, but in terms applies to all matters civil or criminal.

"The provision is intended as a rule of evidence and as protection to the community against the peril of testimony from a person guilty of an offense implying such dereliction of moral principle in the opinion of the Legislature to carry with it the presumption of a total disregard to the obligations of an oath.

"Insolvent proceedings are very important in their consequences, extending, in some cases, to the absolute disregard of debts, and in others limiting parties in the remedies for their collection, and affidavits of the applicant are required, of more or less stringency, to guard against fraud, and for the protection of the rights of creditors to be affected by them.

"There is, therefore, as much if not more reason for disqualifying a person convicted of a felony from making such an affidavit as there is to disqualify him from being a witness on trial of a cause between third persons.

"The effect and extent of the disability created by the statute of a similar character in England was discussed and considered in re Sawyer (2 Adol and Ellis, N. S. P., 721), and it was held to extend to an affidavit which had been used to show cause against a rule calling upon another party to answer certain matters, and the court ordered the affidavit to be taken off the files (see also in 'Greenleaf on Evidence,' Section 374.)"

"The affidavit must be made by a person having personal knowledge of the facts and who is legally competent to testify under oath (Cyc vol. 2, p. 5).

"There are numerous methods by which these exhibits 'B' to 'h' may be made competent and proved, but not by the testimony of the plaintiff or by his affidavit, where objection is made thereto.

EXHIBITS SHOULD NOT BE CONSIDERED.

"The exhibits should not be considered by me upon this motion. There are many statements in the respective affidavits of plaintiff and defendant that I believe are not competent in a case of this kind. I did not consider them on this motion when I believed they violated the rule.

"The plaintiff presents with his affidavit the testimony taken at the hearings before the learned referee as to the acts and conduct of the defendant. She denies these acts and conduct in her affidavit. The trial is pending and she has not been examined. The defendant has amended her answer and charges acts and conduct upon the plaintiff of similar character as charged by him against her, and such acts are supported by affidavits of different persons. She does not seek a divorce but pleads recrimination against the defendant as a defense. If the acts and conduct as charged against each other are sustained neither will be entitled to a decree.

"Sec. 1758.—When divorce denied, although adultery proved. In either of the following cases the plaintiff is not entitled to a divorce, although the adultery is established: (subdivision 46), where the plaintiff has also been guilty of adultery, under such circumstances, that the defendant would have been entitled, if innocent, to a divorce.'

"If these charges are established the plaintiff and defendant will find themselves in the same position as before the commencement of the action, except that they will have had their day in court, or perhaps several days, as to matters affecting them, and this all means time, labor and the expenditure of money.

"The children must be maintained and the defendant must be maintained and supported in a manner corresponding to her rank and position and the fortune of her husband. We must look to all the circumstances of the particular case, in order to award what is fair and just between the parties, for no two cases are alike.

The charges against the defendant are very serious and momentous and, if sustained, the consequences would be very serious to her future, even if she should succeed in sustaining the charges against the plaintiff. This case is of great importance to her. It is her right to make a vigorous effort to meet the proof that may be presented against her and to present her defense, not only for herself but for the interests of her children.

THE PATHETIC SITUATION OF BABY GUY.

"Aside from these considerations, there is one person in this case who is so young and innocent as not to understand what this action is all about, and will not understand until he comes to an age of understanding if plaintiff is successful against the child, the child will bear a stain that cannot be erased and for which he is not responsible. The plaintiff seeks to do that which he believes is his duty to himself and his children. The plaintiff having challenged the paternity of the child, the defendant comes to its protection, and to the defense of its legitimacy.

"This is her duty if she is right in her claims. She vigorously champions the child's cause and this is expected from any mother.

"Our law in its wisdom provides for the care and protection of those who cannot protect themselves, especially infants and those of tender years. There is such an infant in this case. The infant is made a defendant and its paternity is questioned. The courts are charged with the duty of protecting it.

"In this case the infant is represented by an honored and eminent member of the bar, who will protect the infant's interests and give the best that is in him, bringing into play all the learning and ability that the law expects from one placed in such a position of trust. The interests of the defendant and of the infant in this case are to a great extent the same.

The contest means much and no mistake should be made. It should not be permitted to be made. Litigation is expensive and troublesome and such litigation as is anticipated in this case means the bringing of many witnesses from many places and a long and protracted trial. It should not be said that all were not heard that should have been heard. All this means money and time, labor and effort. Proper provision must be made to meet the conditions presented.

"I believe the counsel fee should be allowed in the sum of thirty-five thousand dollars ($35,000) and twelve thousand five hundred dollars ($12,500) be allowed for expenses.

"During the pendency of the action the defendant and the children, and this includes the infant herein attacked, must be provided for.

"The children, except the infant herein, are of sufficient age to determine with whom they desire to reside during pendency of action.

"Their preference should control in the circumstances as now presented. While the children are with the mother or in her charge, she must provide for their schooling and other necessary expenses. I believe to meet the conditions, the alimony should be allowed in the sum of seven thousand five hundred dollars ($7,500) per month.

"Order may be presented in accordance herewith and when signed the stay vacated and the trial proceed before the learned referee at a time and place to be agreed upon between the parties, and if the parties cannot agree the learned referee may fix the time and place.

Guide Says His Testimony Will Aid Mrs. Stillman.

MONTREAL, April 1.—Fred Beauvais, charged with being the father of Mrs. James A. Stillman's youngest son, declared to-day that he had first been sought as a witness for Stillman, in the latter's divorce suit.

"But when it was found that my truthful statements wouldn't help Mr. Stillman, I was given up by his attorneys," Beauvais said. "If I am called upon to testify, my evidence will help Mrs. Stillman."

Beauvais said he was positive Mrs. Stillman would win her case.

MISSING IN BALLOON WITH CREW SINCE MARCH 22 LAST

CH. QUARTER MASTER G.K. WILKINSON. INTERN'L.

Chief Quartermaster George K. Wilkinson Was in Command of the Lost A-5597.

Chief Quartermaster George K. Wilkinson, is in command of the naval balloon A-5597, which has been missing since it left the naval air station at Pensacola, Fla., March 22. The balloon carried a crew of five. It is feared that all have been lost. Planes and dirigibles are still searching for the lost aeronauts.

STRIKES FOLLOW CUT IN WAGES IN BUILDING TRADES

4,000 Mechanics in Worcester and 2,000 in Lawrence Quit.

20 PER CENT. REDUCTION

General Electric at Chicago Announces a Decrease Affecting 25,000.

WORCESTER, Mass., April 1.—Practically all the building work in Worcester was suspended to-day when members of the organized building trades struck against a reduction of 20 per cent. in their pay.

Most of the men reported on the jobs as usual this morning to see if the master builders had changed their minds about making the cut in pay effective to-day, and when informed by the foremen that the cut was in effect they quit and reported at the headquarters. Union leaders report that between 4,000 and 6,000 men have stopped work.

SPRINGFIELD, Mass., April 1.—Building trades workmen in this city, Chicopee, Holyoke and Greenfield went on strike to-day rather than accept wage reductions.

In Holyoke about 1,000 men failed to appear for work to-day and no efforts have been made to adjust differences. The wage scale made effective to-day reduces wages fifteen cents an hour.

In Greenfield 200 carpenters and an equal number of painters went on strike to-day to resist a wage reduction from 80 to 75 cents an hour. One hundred craftsmen are out in Chicopee and about 50 in this city. The Chipee and Springfield strikers are employees of a Holyoke contractor. No definite steps toward a wage reduction have been taken here.

LAWRENCE, Mass., April 1.—Refusing to accept a wage reduction of 20 per cent., more than 2,000 building mechanics failed to report for work here to-day. In a few instances contractors who have only a few men did not enforce the reduction and their employees worked as usual.

The master builders contend that those who failed to report for work are on strike, while they insist that the action of the employers has resulted in a virtual lockout.

There has been little activity in building here for some months, but more than sixty jobs were started in March, many of which are now tied up.

ROCHESTER, N. Y., April 1.—Whatever building has been in progress in Rochester is tied up to-day, the men in the building trades refusing to report to work this morning because of a reduction in wages. Several conferences have been held of late in an effort to arrive at an agreement, but labor refuses to recede from its position that there must be no reduction.

SCHENECTADY, April 1.—The Schenectady Railway Company, in letters received by union officials to-day, announced it would cut wages 25 per cent. May 1. This will restore the rate of 45 cents an hour paid a year ago.

Union officials say they are confident the wage question will be submitted to arbitration.

BUILDING HALTS IN MIDDLE WEST

Men in Trades Refuses to Accept Cuts Made in Wage Scale.

CHICAGO, April 1.—Construction work in a number of Middle Western cities was halted following the refusal of building trades workers to accept reductions in pay scheduled to take effect to-day. Most of the reductions averaged 20 per cent.

Carpenters quit work at Dubuque, Iowa, while in Waterloo, carpenters and brick masons were idle. Union workers at Sioux City refused to accept a pay cut, and 1,500 men were reported idle in Des Moines pending further negotiations over a new wage scale.

Union officers claimed 2,000 men engaged in construction work in Omaha, Neb., quit work to-day. Construction work in St. Louis was stopped following refusal of cement finishers and concrete laborers to accept a 20 per cent. pay cut.

TYPO UNIONS RESTRAINED.

Massachusetts Court Orders No Interference With Phelps Company.

SPRINGFIELD, Mass., April 1.—A permanent injunction, copies of which were received yesterday, has been issued by the Supreme Court restraining the Typographical and Printing Pressmen's Unions from interfering with the Phelps Publishing Company. The decree overrules the exceptions of the defendant unions and confirms the report of a special master on questions of fact.

A bill in equity was brought by the Phelps Company as the result of a strike for a minimum wage of $40 by the typographical union, which affected job and book concerns in this vicinity.

SHIPYARD WAGES CUT.

Ten Per Cent. Off Pay of All Workers in New York District To-Day.

Reduction in wages of 10 per cent. went into effect in all shipyards in the New York district to-day. Thousands of workers were affected in Brooklyn, Staten Island, and New Jersey. A month's notice of the cut had been given the men, however, and there was no trouble reported to-day. The cut was made necessary, according to the owners, by wage reductions in the yards in other cities.

According to John Fors, Business Agent of Local No. 124, International Brotherhood of Boilermakers, 14,000 men are affected in Brooklyn. Fors said he had heard no protests to the cut, and there had been no meetings to consider the reduction.

NO CUT IN THIS TRADE.

10,000 White Goods Workers Win After Lockout.

A threatened strike of 10,000 workers in the white goods industry in New York has been averted through acceptance by manufacturers of the union's demands for an agreement embodying no wage reductions.

A deadlock had prevailed for several weeks after the workers had rejected the proposed 25 per cent. wage cut.

The new agreement provides minimum wage scales for "week workers" and an extra half-holiday on Election Day to enable women to vote.

R. R. OFFICIALS' PAY CUT.

Frisco Orders Reduction of 10 to 20 Per Cent. in Salaries.

ST. LOUIS, April 1.—Salaries of executives of the St. Louis and San Francisco Railroad were reduced from ten to twenty per cent. to-day, J. M. Kurn, President, announced.

A proposal to reduce wages of the company's 28,000 employees is being considered, he added.

Workers Vote 10 Per cent. Reduction.

BUFFALO, April 1.—Two thousand employees of the Jacob Dold Packing Company have voted themselves a 10 per cent. wage reduction, effective Monday. The cut will include the entire personnel, from the President down. The employees stated that the reduction was made on their own initiative because of present business and industrial conditions.

'HUMANE' AGENTS IN BATTLE

One Held on Charge of Threatening to Shoot the Other.

Harry Moran, thirty-eight, of No. 126 East 94th Street, Humane Society agent, was held to-day in $1,000 bail in the Essex Market Court on the complaint of William Beckett, an agent of the American Society for the Prevention of Cruelty to Animals.

Beckett said he and Moran had had a heated argument over a case in court yesterday, when the latter drew a revolver and threatened to shoot him.

"I was surprised," said Beckett, "that such a threat would come from a humane officer, but I opened my coat and said, 'Go ahead and fire.'"

Moran will be given a hearing April 4 on the charge of felonious assault.